

RESPONSE TO FINAL OFFICE ACTION (BY TELECOPIER)

ATTY DOCKET : RM.WSM
APPLICANT(S) : Badr, et al.
SERIAL NO. : 10/523,743
FILED : November 14, 2005
INT'L S.N. : PCT/US2003/024188

Examiner: Christian Yongkyun Chang

Art Unit: 3735
Conf. No : 7945
INT'L FILED: 01 August 2003

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FEB 05 2009***In the Claims***

Please amend the claims in accordance with Annexure 1, attached hereto, showing the amendments to the claims.

REMARKS

Amendments are presented herein to improve the form of the subject application and in response to the Examiner's comments in the above-identified Final Office Action.

Please note that the references herein to the specification are correlated to the relevant WIPO publication, specifically WO2004/012597 A1.

Status of the Claims

The Examiner states that the Final Office Action is responsive to the Amendments filed on September 19, 2008. During examination, claims 1, 3-6, 8-10, and 12-34 were pending in the application, and the Examiner acknowledges Applicants' amendments to claims 1, 4-6, and 8.

After entry of the amendments in the present Response to Final Office Action, claims 1, 4-6, 8-10, and 12-34 remain in the case; independent claim 1 has been amended; and dependent claim 3 has been canceled, as will be discussed below.

Information Disclosure Statement

Applicants gratefully acknowledge that the IDS submitted on September 19, 2008 has been considered in full by the Examiner.

Claim Rejections - 35 U.S.C. § 112

Claims 1 and 3-6 stand rejected under 35 U.S.C. § 112, first paragraph. The Examiner states that these claims fail to comply with the written description requirement. According to the Examiner, the claim(s) contains subject matter that was not described in the specification in such a way as to convey reasonably to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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As to claim 1, the Examiner asserts that the amended claim recites a curve-fitting onto the correlation of the air flow data against normalized air pressure data as a curve corresponding to a quadratic function and computing a resistance corresponding to the reciprocal of coefficient C, whereby Resistance = 1/C. However, according to the Examiner, nowhere in the original disclosure is the use of the coefficient C expressly taught to compute a resistance when the mathematical function is a quadratic function. The Examiner continues by stating that in all instances where this feature is recited in the specification ([0047], [0095]), it appears that it is specific to the three term polynomial mathematical function. As such, the Examiner considers the amended claim to contain new matter that is not supported in the original disclosure.

With respect to claim 3, the Examiner states that this also constitutes new matter as the claim requires that the predetermined multiple term mathematical function be both a quadratic function $F(P) = AP^2 + BP + C$ and a three term polynomial function $F(P) = AP^3 + BP^2 + CP + D$. According to the Examiner, the original disclosure does not support the multiple term mathematical function being both a quadratic function and a polynomial function in the same embodiment.

Claims 4-6 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. According to the Examiner, the claims contain subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The Examiner states that claim 4 refers to a step of computing the derivative of a predetermined multiple term mathematical function corresponding to the relationship:

$$\frac{dF}{dP} = 3AP^2 + 2BP + C$$

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The Examiner asserts, however, that since claim 1 recites that the predetermined multiple mathematical function is a quadratic function, the above relationship would not be a derivative of the quadratic function. As such, the mathematical function stated above is not considered by the Examiner to be enabled. Claims 5 and 6 stand rejected as being dependent upon rejected claim 4.

Finally, the Examiner states that Applicants' amendment necessitated the new grounds of rejection presented in this action, and accordingly, the action is made final. In this regard, the Examiner draws Applicants' attention to MPEP § 706.07(a).

APPLICANTS' RESPONSE

Applicants have amended independent claim 1 to specify subject matter that is squarely in accordance with the teaching on the specification. More specifically, the independent claim now specifies that "... the predetermined multiple term mathematical function is a three term polynomial function $F(P) = AP^3 + BP^2 + CP + D$, where A , B , and C are coefficients, and D is a constant;" Moreover, this amendment renders the independent claim to be fully consistent with the Examiner's assertion in the present Final Office Action.

In addition to the foregoing, the amendment to independent claim 1 renders the subject matter of dependent claim 4 to be correct, because

$$\frac{dF}{dP} = 3AP^2 + 2BP + C$$

is a quadratic function that constitutes the derivative of the three term polynomial function $F(P) = AP^3 + BP^2 + CP + D$, where A , B , and C are coefficients, and D is a constant.

Dependent claim 3 has been canceled.

Dependent claims 5 and 6 continue to depend from dependent claim 4, which is now, by virtue of the amendment herein to independent claim 1, in allowable condition.

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Accordingly, it is respectfully asserted that the Examiner's rejection of claims 1 and 3-6 under 35 U.S.C. § 112, first paragraph, has been overcome, and these claims are in allowable condition.

Allowable Subject Matter

Applicants gratefully acknowledge that claims 8-10, and 12-34 are considered by the Examiner to be allowed.

In regard of the allowance, the Examiner has provided the following statement of reasons for the indication of allowable subject matter:

As to claims 23, the prior art of record fails to teach a method as claimed by Applicants, including the step of computing a resistance corresponding to the reciprocal of coefficient C.

As to claim 8, the prior art of record fails to teach a method as claimed by Applicants, including that each breathing cycle of the human patient is determined in relation to the predetermined point thereof corresponding to the predetermined normalized air pressure value.

Claims 9, 10, 12-22, 24-34 are dependent upon the aforementioned claims.

The Examiner's Response to Applicants' Prior Arguments

The Examiner states that Applicant's arguments set forth on pages 3-4, filed September 19, 2008, with respect to claims 5 and 6 have been fully considered and are persuasive. The rejections of claims 5 and 6 under 35 U.S.C. § 112, second paragraph, of claims 5 and 6 have therefore been withdrawn.

Conclusion

In view of the foregoing, it is respectfully requested that the Examiner reconsider the present application, allow the claims, and pass the application for issue. If the Examiner

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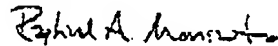
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believes that the prosecution of this case can be expedited by a telephone interview, the Examiner is requested to call attorney for Applicants at the telephone number indicated hereinbelow.

Respectfully submitted,



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enc Annexure 1 (Amended Claims)
File: RFOA.WSM